

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 11, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

Amend Insurance Requirement for (48) General Leases Awarded for Residential  
Purposes, Pursuant to Act 314, Session Laws of Hawaii 1991, as Amended,  
Kikala and Keokea, Puna, Hawaii, Tax Map Keys: (3) 1-2-43: 1-69

BACKGROUND:

Act 314, Session Laws of Hawaii 1991, as amended by Act 172, Session Laws of Hawaii 1993, and further amended by Act 81, Session Laws of Hawaii 1994, authorized the Department of Land and Natural Resources to negotiate and enter into long-term leases of sixty-five years in duration subject to renewal by mutual agreement, with persons who meet both of the following criteria: 1) persons living in Kalapana, District of Puna, who were dispossessed or displaced as a result of the volcanic eruption on the Island of Hawaii which began on January 3, 1983; and 2) persons who meet the qualifications under Section 13D-3(b), HRS. The authority granted by Act 314, SLH 1991 will expire: 1) when leases have been negotiated and recorded in the Bureau of Conveyances; or 2) on December 31, 1995; whichever occurs first.

The State-owned, public lands eligible for long-termed leases under Act 314, SLH 1991 are limited to no more than 150 acres situate at Kikala and Keokea, Puna District, Island of Hawaii, an area adjacent to and mauka of the Kalapana-Kapoho Beach Road. Located between the 20 and 21 mile marker post, previously identified as Tax Map Key: 3<sup>rd</sup>/ 1-2-07: portions of 2. Upon successful subdivision of Parcel 2, the Kikala-Keokea Subdivision is now identified as Parcels 1 through 69 of Tax Map Key: 3<sup>rd</sup>/ 1-2-43. Act 314, SLH 1991 stipulated that each residential lot created and leased to a qualified person should contain a minimum land area of one (1) acre. The creation and development of the Kikala-Keokea Residential Subdivision, under the provisions of the Act, exempted this project, "from all statutes, ordinances, charter provisions, and rules of any governmental agency related to zoning and construction standards for subdivisions, the development and improvement of land, and the construction of units thereon; provided that the DLNR finds the project is consistent with the purpose and intent of this Act and meets minimum requirements of health and safety."

At its meeting of December 16, 1994, Item F-3, the Board of Land and Natural Resources authorized the awarding of direct residential leases pursuant to Act 314, Session Laws of Hawaii 1991, covering a portion of government lands of Kikala and Keokea, Puna, Hawaii, identified as Tax Map Key: 3<sup>rd</sup>/ 1-2-07: portion of 2.

At its meeting of November 17, 1995, Item F-9, the Board approved to amend its prior Board Action of December 16, 1994, Item F-3, to revise or delete certain terms and conditions contained in the residential lease form. These amendments included; 1) the deletion of lease requirements regarding performance bond, fire insurance, and extended coverage insurance; 2) that designated successors be a spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, or granddaughter of the Lessee, 3) Formation of a Kikala-Keokea Residential Community Association, within ninety days of the commencement date of the lease. That the Association shall be formed as a non-profit corporation, responsible for the management, maintenance, repair, protection, and preservation of the subdivision's roadways, drainage ways, and road right-of-ways, assuming all liability for their use.

At its meeting of November 20, 1998, Item D-6, the Board authorized Land Division to instruct Fiscal Office to stop rental billings of the 48 general leases and to amend the lease document to reflect a "new" commencement date to be determined by the Chairperson. Due to problems/ delays experienced in obtaining funding for construction of infrastructures, it was recommended that billing of the lease rent be postponed at such time the Lessees are able to enter and begin occupancy of the leased area.

At its meeting of September 8, 2006, Item D-5, the Board:

1. Authorize Land Division to instruct Fiscal Office to commence with billing of lease rent of the 48 general leases of the Kikala-Keokea Residential Subdivision on January 1, 2007;
2. Amend lease terms and conditions of the forty-eight General Leases awarded, pursuant to Act 314, Session Laws of Hawaii 1991, relating to:

Rent: For the First ten (10) years of the lease, no rent will be charged. That for the next fifteen (15) years, commencing on January 1, 2007, the sum of \$132.00 per annum.

Liability Insurance: That the requirements to acquire insurance be modified to: a) allow Lessees to obtain a policy or policies from any insurance company of their choosing and not just from those licensed to do business in the State of Hawaii, b) that the State of Hawaii need not be named as an "Additional Insured" on the policy, until such time those policies again become available, and c) that a homeowner's policy be required, instead of the current need for a commercial general liability policy.

Improvements: That the provisions concerning improvements be modified to: a) delete the allowance for a rent increase as a result of construction of improvements; and b) inserting "and/or Lien Holder of Record," in addition to the Lessor as the owner of improvements at the expiration or termination of the lease;

Mortgage: That the following modifications relating to mortgage be inserted: a) That "Farmers Home Administration," as Mortgagee, be replaced with "USDA Rural Housing Service", the updated name of the federal agency, b) That the "Modification to State of Hawaii Department of Land and Natural Resources, General Lease," as requested by USDA Rural Housing Service be approved as an amendment to the leases of borrowers approved for USDA Rural Housing Services loans;

Construction requirement: That construction of a dwelling shall be completed by December 31, 2012. That in accordance with State of Hawaii Department of Health, In the Matter of Application for Variance for: Na Ohana O Kalapana Association, Tenants Association for Kikala-Keokea Subdivision, Individual Wastewater System (IWS), Docket No. 97-VWW-04, DECISION AND ORDER, dated January 29, 1999, Pursuant to Chapter 3432D, Hawaii Revised Statutes, and Chapter 62 of Title 11, Administrative Rules and based upon the application and staff review, the Variance Request from the provisions of Chapter 11-62, Section 11-62-05(c ) and 11-62-31.1(a)(1)(B)" was "**GRANTED** with the following provisions: 1) Only one cesspool will be allowed per lot; 2) No further subdivision of lots will be allowed; 3) All future dwellings or buildings generating wastewater on the lot shall meet the Department of Health's current requirements regarding wastewater treatment and disposal; 4) If a drinking water source is developed within 1000 feet of the subdivision, any wastewater system on a lot falling within the 1000 foot radius of the drinking water well shall be upgraded to an aerobic unit with absorption trenches or beds; 5) The development shall connect to a municipal sewer system should it become available to the area. Only one cesspool will be allowed per lot; 6) A covenant to the deed or lease agreement for each of the lots in the subdivision shall contain the applicable provisions 1 through 5 stated above; 7) Plans for any IWSs built in the subdivision shall be submitted to the Wastewater Branch for review and approval. That the IWS shall be approved by the Director, in writing, before being placed into operation.

Formation, purpose and responsibility of the Kikala-Keokea Residential Community Association (Association): Delete conditions requiring the Association to assume responsibility and liability for the use, management, maintenance, repair, protection, and preservation of the Kikala-Keokea Residential Subdivision's roadways, drainage ways, road right-of-ways, and infrastructure upon its successful dedication to the County of Hawaii.

3. Authorize the granting of utility easements as necessary to the Hawaii Electric

Light Company (HELCO) and Hawaiian Telcom, Inc. (HTI), subject to concurrences from respective Lessees of affected parcels. Amend descriptions of the respective affected leases that would contain a HELCO and/or HTI utility easement.

To date, staff has processed 20 lease amendment documents.

On June 28, 2007, staff along with Deputy Attorney General Linda Chow was invited to the Kikala-Keokea Tenant Association Meeting held at the Pahoa School Band Room. (Exhibit B) The purpose was to discuss the liability insurance requirement and solutions. This submittal is to only address the liability insurance requirement.

#### ANALYSIS:

Currently, the State lease and amendment document requires the Lessee to obtain and maintain, at their own cost "comprehensive general liability insurance or homeowner's insurance, in an amount of at least \$300,000 for each occurrence and \$500,000 aggregate, with a duly licensed insurance company."

The Kilauea eruption started in 1983 and volcanic activity continues to this day. The Kikala-Keokea subdivision is located within the Lava Zone 1 and 2. This is considered a high hazard area. Obtaining insurance is limited and costly.

If a Lessee has a house on the State property the cost for homeowners insurance starts at \$600+. Additional coverage is required because homeowners' insurance covers up to \$100,000 in liability. If a Lessee's has not constructed a house, the cost for liability insurance would be \$2,000+. If the Lessee has other property coverage, it is possible for liability insurance coverage to be extended to the Kikala-Keokea vacant lot. If the Lessee starts to construct, they would have to obtain separate liability insurance coverage starting at \$1,000+.

The amount of the coverage determines the amount of risk the State faces. DAGS Risk Management was consulted. Today, personal injury claims exceeds \$100,000. To lower it to \$100,000 would be risky.

The AG office was consulted. We are told this is a policy call. The Department needs to weigh the amount of risk due to the activity in the area, and the amount of risk it takes by lowering the coverage amount. To date, we have no record of any tort claims or lawsuits in the area. The area is very remote. The major concern the State faces is the lava activity in the Royal Gardens subdivision.

By the State lowering personal or general liability coverage to \$100,000, the Lessee's could then obtain insurance. Right now, forty-six (46) tenants lack insurance coverage. Higher coverage is available, but unaffordable by the majority of the Lessee's. Staff is of the belief that it is better to have some kind of coverage as opposed to having no

coverage at all. It is unacceptable to continue with no liability insurance coverage.

CONCLUSION:

Due to events beyond our control, staff is requesting the Land Board amend the liability insurance to say "in an amount of at least \$100,000 for each occurrence". If at a later date it becomes necessary for the amount to change (up), staff will immediately bring this matter back to the Land Board.

RECOMMENDATION: That the Board:

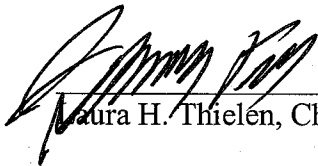
- A. Amend the liability insurance provision of the forty-eight (48) General Leases awarded pursuant to Act 314, Session Laws of Hawaii 1991, as follows:
  - 1. Change 'in an amount of at least \$300,000 for each occurrence and \$500,000 aggregate' to 'in an amount of at least \$100,000 for each occurrence'.
- G. Review and approval by the Department of the Attorney General; and
- H. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





P. O. Box 408  
Pahoa, HI 96778  
October 16, 2007

Russell Tsuji, Land Administrator  
DLNR: Land Division  
P. O. Box 621  
Honolulu, HI 96809

Dear Mr. Tsuji,

I have been asked to write you about the insurance requirement on our Kikala-Keokea General Lease No. S-5440 that states that we, as lessee's will procure and maintain comprehensive general liability or homeowner's insurance, in an amount of at least \$300,000 for each occurrence and \$500,000 aggregate, with a duly licensed insurance company.

It was only after I finished building my home that I realized the actual impact of these requirements. It turns out that local insurance companies cover a maximum amount of \$100,000 for each occurrence and \$300,000 aggregate. There are no companies in Hawaii that will cover us for the amounts specified in our lease. You may check with my long time insurance agent Herb Spector of Royal Insurance Agency, telephone number: 808-934-9677.

The only company that will cover us for the amounts you require is Lloyd's of London. As a result, I am paying \$2486.83 for my policy on my 1700 sq. ft. house. This is more than double what I was paying for a similar sized home in Volcano. Not only that, I had to pay it up-front. I could not pay in installments. Having to pay that while I was squeezing what money we had left to finish the house really hurt.

Do you know the history on that amount? Who came up with the amount and why?

Please answer this letter as soon as you can since we will be holding an association meeting on November 5th. You may e-mail me at [rayandmaile@msn.com](mailto:rayandmaile@msn.com).

Sincerely,

Yuk Lin Moulds-Carr

cc: Wesley Matsunaga

EXHIBIT "B"